



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2019-0020; Notice 2]

FCA US, LLC, Denial of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petition.

SUMMARY: FCA US, LLC, (f/k/a Chrysler Group, LLC) “FCA,” has determined that certain Mopar branded headlamp assemblies sold as aftermarket equipment and installed as original equipment in certain model year (MY) 2017–2018 Dodge Journey motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment*. FCA filed a noncompliance report for the replacement equipment dated March 14, 2019, and later amended it on April 9, 2019. FCA also filed a noncompliance report for the associated vehicles dated March 14, 2019, and later amended it on April 9, 2019, and April 25, 2019. FCA subsequently petitioned NHTSA (the “Agency”) on April 5, 2019, and filed a supplemental petition on May 14, 2019, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces the denial of FCA’s petition.

FOR FURTHER INFORMATION CONTACT: Leroy Angeles, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), (202) 366-5304, Leroy.Angeles@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Overview:

FCA has determined that certain MY 2017–2018 Dodge Journey motor vehicles and replacement Dodge Journey headlamp assemblies do not fully comply with paragraph S8.1.11 of

FMVSS No. 108, *Lamps, Reflective Devices, and Associated Equipment* (49 CFR 571.108). FCA filed a noncompliance report for the replacement equipment dated March 14, 2019, and later amended it on April 9, 2019. FCA also filed a noncompliance report for the associated vehicles dated March 14, 2019, and later amended it on April 9, 2019, and April 25, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. FCA subsequently petitioned NHTSA on April 5, 2019, and filed a supplemental petition on May 14, 2019, for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

Notice of receipt of FCA's petition was published with a 30-day public comment period, on February 28, 2020, in the ***Federal Register*** (85 FR 12059). No comments were received. To view the petition and all supporting documents, log onto the Federal Docket Management System's (FDMS) website at <https://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2019-0020."

II. Equipment and Vehicles Involved:

Approximately 16,604 Mopar headlamp assemblies sold as aftermarket equipment, manufactured between August 2, 2017, and July 6, 2018, are potentially involved. Approximately 84,908 MY 2017–2018 Dodge Journey motor vehicles, manufactured between August 2, 2017, and July 6, 2018, are potentially involved.

III. Noncompliance:

FCA explains that its subject vehicles and equipment are noncompliant because the subject headlamp assemblies, sold as aftermarket equipment and equipped in certain MY 2017–2018 Dodge Journey motor vehicles, contain a front amber side reflex reflector that does not meet the photometric requirements specified in paragraph S8.1.11 of FMVSS No. 108.

Specifically, the reflex reflector, in the subject headlamp assemblies, does not meet the minimum photometry requirements at the observation angle of 0.2 degrees.

IV. Rule Requirements:

Paragraph S8.1.11 of FMVSS No. 108 includes the requirements relevant to this petition. Each reflex reflector must be designed to conform to the photometry requirements of Table XVI-a, when tested according to the procedure in paragraph S14.2.3 of FMVSS No. 108, for the reflex reflector.

V. Summary of FCA's Petition:

The following views and arguments presented in this section, "V. Summary of FCA's Petition," are the views and arguments provided by FCA. They do not reflect the views of NHTSA.

FCA described the subject noncompliance and stated that the noncompliance is inconsequential as it relates to motor vehicle safety. FCA submitted the following views and arguments in support of its petition:

1. FCA cites a prior NHTSA decision¹ on a petition for inconsequential noncompliance and quotes NHTSA, in part, as stating: "For the purposes of FMVSS No. 108, the primary function of a reflex reflector is to prevent crashes **by permitting early detection of an unlighted motor vehicle at an intersection or when parked on or by the side of the road.**"²
2. Per FCA, the reflex reflectors on the subject vehicles "perform adequately to meet the safety purpose of the standard because they permit the early detection of an unlighted motor vehicle at an intersection or when parked, notwithstanding their deviation from certain photometric requirements."

¹ See DRV, LLC, Denial of Petition for Decision of Inconsequential Noncompliance; 82 FR 24204, May 25, 2017.

² Emphasis added by FCA.

3. FCA believes that “the failure of these reflex reflectors to meet the photometric requirements does not reduce their effectiveness in providing the necessary visibility for oncoming vehicles and that the difference between the reflectivity provided by a compliant reflector is not distinguishable from the reflectivity provided by a noncompliant reflector.” FCA compared the performance of two Dodge Journey vehicles, one equipped with a compliant front side reflex reflector and the other a noncompliant front side reflex reflector parked front end-to-front end across a road’s surface. Observers used a different vehicle’s headlamps as a source of illumination to evaluate the luminous intensity of each front side reflex reflector; that source of illumination was located 100 feet (30.5 meters) away from the two Dodge Journey vehicles. FCA chose an illumination distance of 100 feet (30.5 meters) because that is the same distance specified in FMVSS No. 108 for testing reflex reflectors using a goniometer in a photometric laboratory.
4. With regard to FCA’s evaluation, FCA chose vehicles with varying mounting heights, which included a 2019 Jeep Cherokee with LED projector headlamps, a 2019 Ram 1500 Pickup Truck with LED reflector headlamps, and a 2019 Alfa Romeo Giulia with Bi-Xenon projector headlamps as sources of illumination. Sixteen FCA employees (and only eight for the Alfa Romeo tests) volunteered as evaluators and stood immediately in front of, and at the centerline of, the vehicles whose headlamps were being used as the source of illumination. None of the evaluators were able to distinguish any luminous intensity differences in the light being reflected in any of the scenarios. FCA believes that these vehicles cover the range of typical headlamp mounting heights for vehicles on the road today.

VI. NHTSA’s Analysis:

The burden of establishing the inconsequentiality of a failure to comply with a *performance requirement* in a standard—as opposed to a *labeling requirement*—is more

substantial and difficult to meet. Accordingly, the Agency has not found many such noncompliances inconsequential.³ Potential performance failures of safety-critical equipment, like seat belts or air bags, are rarely deemed inconsequential.

An important issue to consider in determining inconsequentiality based upon NHTSA's prior decisions on noncompliance issues is the safety risk to individuals who experience the type of event against which the recall would otherwise protect.⁴ NHTSA also does not consider the absence of complaints or injuries to show that the issue is inconsequential to safety. "Most importantly, the absence of a complaint does not mean there have not been any safety issues, nor does it mean that there will not be safety issues in the future."⁵ "[T]he fact that in past reported cases good luck and swift reaction have prevented many serious injuries does not mean that good luck will continue to work."⁶

The primary function of a reflex reflector is to prevent crashes by permitting early detection of an unlighted motor vehicle at an intersection or when parked on or by the side of a road. The purpose of these reflectors is to accurately depict the size of a vehicle when parked or disabled in the dark, which minimizes the risk of motor vehicle crashes.

The subject reflex reflectors failed 5 out of the 10 required test points where the photometry measurements were, at best, 68.6% below the minimum requirement. In other words, at specific test points, the reflex reflectors provide less than one-third of the illuminance

³ Cf. *Gen. Motors Corporation; Ruling on Petition for Determination of Inconsequential Noncompliance*, 69 FR 19897, 19899 (Apr. 14, 2004) (citing prior cases where noncompliance was expected to be imperceptible, or nearly so, to vehicle occupants or approaching drivers).

⁴ See *Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osram Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

⁵ *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 21663, 21666 (Apr. 12, 2016).

⁶ *United States v. Gen. Motors Corp.*, 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect poses an unreasonable risk when it "results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future").

that a compliant reflex reflector provides (*i.e.*, a reflex reflector which meets the minimum safety standard).

NHTSA does not find FCA's subjective evaluation described above sufficiently compelling to grant this petition. FCA's evaluation attempts to show that the average human eye cannot discern a difference in the luminous intensity between FCA's noncompliant reflectors and other compliant reflectors that meet the minimum safety standard. However, FCA's evaluation was limited to occupants standing no more than 100 feet from the test vehicles, and only at certain angles. While FMVSS No. 108 specifies a measurement distance for reflex reflector photometry of 100 feet, real world performance is not limited to a static distance measurement established in a minimum safety standard. For these reasons, NHTSA does not believe that FCA's subjective evaluation is sufficient to support a determination of inconsequential noncompliance.

As previously stated, the subject reflex reflectors failed by a significant margin to meet the minimum safety requirement at multiple required test points. Compared to a reflex reflector that meets the minimum safety standard, the subject reflex reflectors, at some test points, provided less than one-third of the required illuminance of a compliant reflex reflector. Therefore, NHTSA's evaluation of consequentiality of the subject noncompliance is based, in part, on NHTSA's determination that the performance failure of the subject reflex reflectors deviates to such a significant degree that it would be noticeable to drivers of other motor vehicles. Consequently, the subject noncompliance creates a risk to motor vehicle safety.

Another factor considered in the evaluation of this petition is a NHTSA study on the effectiveness of side marker lamps,⁷ which showed that the addition of side marker lamps prevents 106,000 accidents, 93,000 nonfatal injuries and \$347 million in property damage annually. While this study only relates to side marker lamps, the benefits are similar for reflex

⁷ See *An Evaluation of Side Marker Lamps for Cars, Trucks and Buses*, DOT HS-806-430 (July 1983). <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/806430>

reflectors. Reflex reflectors aid in the visibility of parked or unlighted motor vehicles at night and are often mounted in the same or similar location as side marker lamps, and therefore, a performance failure of a reflex reflector is also consequential to motor vehicle safety due to reduced visibility for drivers of other vehicles.

In summary, given the magnitude of the performance failure of the subject reflex reflectors, the subject reflex reflectors create a risk that drivers of other vehicles will not detect a parked and unlighted motor vehicle early enough to avoid a vehicle crash. Consequently, NHTSA has determined that the subject noncompliance creates a risk to motor vehicle safety by failing to prevent motor vehicle crashes, which was the purpose of NHTSA's FMVSS No. 108 standard. *See* 49 CFR 571.108, S2.

VII. NHTSA's Decision: In consideration of the foregoing, NHTSA finds that FCA has not met its burden of persuasion that the subject FMVSS No. 108 noncompliance of the affected equipment and vehicles is inconsequential to motor vehicle safety. Accordingly, FCA's petition is hereby denied. FCA is consequently obligated to provide notification of, and a free remedy for, that noncompliance, pursuant to 49 U.S.C. 30118 and 30120.

(**Authority:** 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8.)

Anne L. Collins,

Associate Administrator for Enforcement.